



# भारत का राजपत्र The Gazette of India

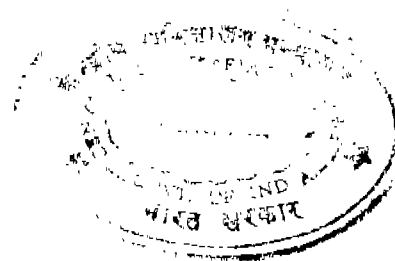
असाधारण  
EXTRAORDINARY

भाग II—खण्ड 2

PART II—Section 2

प्राधिकार से प्रकाशित

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation.

## RAJYA SABHA

The following Bills were introduced in the Rajya Sabha on 23rd December, 1999:—

### I

BILL No. LII OF 1999

*A Bill further to amend the Explosive Substances Act, 1908.*

BE it enacted by Parliament in the Fiftieth Year of the Republic of India as follows:—

1. (1) This Act may be called the Explosive Substances (Amendment) Act, 1999.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In the Explosive Substances Act, 1908, for sections 2 to 5 the following sections shall be substituted, namely:—

Substitution of new sections for sections 2 to 5 of Act 6 of 1908.

‘2. In this Act,—

Definitions.

(a) the expression “explosive substance” shall be deemed to include any materials for making any explosive substance; also any apparatus, machine, implement or material used, or intended to be used, or adapted for causing, or aiding in causing, any explosion in or with any explosive substance; also any part of any such apparatus, machine or implement;

(b) the expression “special category explosive substance” shall be deemed to include research development explosive (RDX), penta erythritol tetra nitrate

(PETN), high melting explosive (HMX), tri nitro toluene (TNT), low temperature plastic explosive (LTPE), composition exploding (CE) (2, 4, 6 phenyl methyl nitramine or tetryl), OCTOL (mixture of high melting explosive and tri nitro toluene), plastic explosive kirkee-1 (PEK-1) and RDX/TNT compounds and other similar type of explosives and a combination thereof and remote control devices causing explosion.'

Punishment  
for causing  
explosion  
likely to  
endanger life or  
property.

3. Any person who unlawfully and maliciously causes by—

(a) any explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property shall, whether any injury to person or property has been actually caused or not, be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine;

(b) any special category explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property shall, whether any injury to person or property has been actually caused or not, be punished with death, or imprisonment for life, and shall also be liable to fine.

Punishment  
for attempt to  
cause  
explosion, or  
for making or  
keeping  
explosive with  
intent to  
endanger life  
or property.

4. Any person who unlawfully and maliciously—

(a) does any act with intent to cause by an explosive substance or special category explosive substance, or conspires to cause by an explosive substance or special category explosive substance, an explosion in India of a nature likely to endanger life or to cause serious injury to property; or

(b) makes or has in his possession or under his control any explosive substance or special category explosive substance with intent by means thereof to endanger life, or cause serious injury to property in India, or to enable any other person by means thereof to endanger life or cause serious injury to property in India,

shall, whether any explosion does or does not take place and whether any injury to person or property has been actually caused or not, be punished,—

(i) in the case of any explosive substance, with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine;

(ii) in the case of any special category explosive substance, with rigorous imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Punishment for  
making or  
possessing  
explosives  
under  
suspicious  
circumstances.

5. Any person who makes or knowingly has in his possession or under his control any explosive substance or special category explosive substance, under such circumstances as to give rise to a reasonable suspicion that he is not making it or does not have it in his possession or under his control for a lawful object, shall, unless he can show that he made it or had it in his possession or under his control for a lawful object, be punished,—

(a) in the case of any explosive substance, with imprisonment for a term which may extend to ten years, and shall also be liable to fine;

(b) in the case of any special category explosive substance, with rigorous imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.'

## STATEMENT OF OBJECTS AND REASONS

In the recent past there have been incidents of bomb blasts on a very large scale in some parts of the country particularly in Jammu and Kashmir, Tamil Nadu, Andhra Pradesh, Punjab, Bihar, West Bengal and the North-East causing huge loss to life and property. Terrorists and anti-national elements have, through clandestine means, acquired research development explosive (RDX), penta erythritol tetra nitrate (PETN), high melting explosive (HMX) and other similar types of explosive substances. These explosives, having high plasticity and low evaporation, are difficult to detect in the normal course. At the same time, they are far more lethal in their potential for damage than the conventional explosives. Use of such explosives by terrorists and anti-national elements has not only endangered human life but has also caused a great threat to the security environment of the country.

2. In the Explosive Substances Act, 1908 which provides for the punishment to any person who causes an explosion likely to endanger life or property, or who attempts to cause such an explosion or makes or has in his possession explosive substance with intent to endanger life or property, there is no distinction between offences involving use of conventional explosives as compared with offences committed with more lethal explosives, *e.g.*, RDX, PETN, HMX, LTPE and other similar explosives. There is also a need that explosion caused by use of Remote Control Devices should attract more severe punishment. To overcome these deficiencies, it is proposed to amend the Act by putting more lethal explosives, *viz.*, RDX, PETN, HMX and other similar explosives or a combination thereof and remote control devices for causing explosion under 'Special Category Explosive Substances' and to provide for enhancement in maximum punishment for offences committed with such explosive substances by amending the relevant provisions of the Act.

3. The Bill seeks to give effect to the above proposed amendments in the Act.

L. K. ADVANI

## II

BILL No. LIV OF 1999

*A Bill further to amend the Constitution of India.*

Be it enacted by Parliament in the Fiftieth Year of the Republic of India as follows:—

- Short title.           1. This Act may be called the Constitution (Eighty-eighth Amendment) Act, 1999.
- Amendment of  
article 335.           2. In article 335 of the Constitution, the following proviso shall be inserted at the  
end, namely:—

"Provided that nothing in this article shall prevent in making of any provision in favour of the members of the Scheduled Castes and the Scheduled Tribes for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of promotion to any class or classes of services or posts in connection with the affairs of the Union or of a State."

## STATEMENT OF OBJECTS AND REASONS

The Scheduled Castes and the Scheduled Tribes had been enjoying the facility of relaxation of qualifying marks and standards of evaluation in matters of reservation in promotion. The Supreme Court in its judgement dated 1-10-1996 in the case of *S. Vinod Kumar Vs. Union of India* held that such relaxations in matters of reservation in promotion were not permissible under article 16(4) of the Constitution in view of the command contained in article 335 of the Constitution. The Apex Court also held that the law on the subject of relaxation of qualifying marks and standards of evaluation in matters of reservation in promotion is one laid down by the nine-judge Constitution Bench of the Supreme Court in the case of *Indira Sawhney and others Vs. Union of India and others*. Para 831 of Indira Sawhney judgement also held such relaxations as being not permissible under article 16(4) in view of the command contained in article 335 of the Constitution. In order to implement the judgements of the Supreme Court, such relaxations had to be withdrawn with effect from 22.07.1997.

2. In view of the adverse effect of the order dated 22.07.1997 on the interests of Scheduled Castes and Scheduled Tribes, representations had been received by the Government from several quarters including the Members of Parliament. Considering the various representations, the Government has reviewed the position and decided to move for constitutional amendment with a view to restore the relaxations which were withdrawn vide instructions issued by the Department of Personnel and Training on 22.07.1997.

3. The Bill seeks to achieve the aforesaid object.

VASUNDHARA RAJE.

## III

BILL NO. LIII OF 1999

*A Bill to prohibit the organisation, conduct and promotion of lotteries and to provide for matters connected therewith or incidental thereto.*

BE it enacted by Parliament in the Fiftieth Year of the Republic of India as follows:—

Short title and extent.

1. (1) This Act may be called the Lotteries (Prohibition) Act, 1999.
- (2) It extends to the whole of India.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—
  - (a) "lottery" means a scheme, in whatever form and by whatever name called, for distribution of prizes by lot or chance to those persons participating in the lots or chances of prize by purchasing tickets;
  - (b) "organisation" means any local or other authority functioning under the control of the Central Government or a State Government and includes an undertaking established by or under a Central, Provincial or State Act or which is controlled or financed wholly or substantially by funds, provided directly or indirectly, by the Central Government or a State Government or a Government company as defined under section 617 of the Companies Act, 1956.

**3. The Central Government or a State Government or any organisation shall not—**Prohibition of  
lotteries.

(i) organise, conduct or promote any lottery or sell or distribute or put for sale any lottery ticket, in any manner whatever or receive or remit any money in pursuance of organising, conducting or promoting any lottery or sale or distribution or putting for sale of any lottery ticket; or

(ii) cause any lottery to be organised, conducted or promoted through any other person including any society whether registered or not under any law for the time being in force.

**4. (1)** Where any contravention of the provisions of section 3 has been committed by any Department of the Central Government or State Government or any organisation, the Head of such Department or the person incharge of such organisation, as the case may be, shall be guilty of offence and shall be liable to be proceeded against and punished under sub-section (3):

Penalty

Provided that nothing contained in this section shall render such Head of the Department or such person incharge liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under sub-section (1) has been committed by a Department of the Central Government or State Government or any organisation and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any officer, other than the head of such Department or the person incharge of such organisation, such officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(3) Whoever commits an offence under sub-section (1) shall be punishable with rigorous imprisonment for a term which may extend to two years, or with fine, or with both.

**5. (1)** Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was incharge of, and was responsible to the company for the conduct of, the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Offences by  
companies.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

*Explanation.*—For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

**6.** Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence under this Act shall be cognizable and non-bailable.

Offences to be  
cognizable and  
non-bailable.

Repeal and  
saving.

7. (1) The Lotteries (Regulation) Act, 1998 is hereby repealed.

17 of 1998.

(2) Notwithstanding such repeal, but without prejudice to the application of section 6 of the General Clauses Act, 1897, anything done or any action taken or purported to have been done or taken under or in pursuance of the Act so repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under or in pursuance of the corresponding provisions of this Act.

10 of 1897.



## STATEMENT OF OBJECTS AND REASONS

The malpractices in the conduct of lotteries and its impact on the poorer sections of the society had been under scrutiny of the Government for quite some time. The continued prevalence of the popularity known single digit and instant lotteries and the temptation offered by them had proved to be the undoing of many families. In spite of the guidelines issued by the Central Government from time to time as also the guidelines issued by the Supreme Court of India in the matter, the evil could not be totally eliminated and it was felt that a Central legislation to regulate the conduct of lotteries was necessary to protect the interest of the gullible poor. To tackle this evil, the Lotteries (Regulation) Act, 1998 was enacted by Parliament. This Act, besides imposing stipulations for conduct of lotteries in the country, banned single digit and pre-announced number lotteries.

2. The Lotteries (Regulation) Bill, 1998 was referred to the Department related Parliamentary Committee on Home Affairs. The said Committee, after considering the matter in all its aspects, had strongly recommended to the Government to come forward with a comprehensive Bill, at the earliest, in consultation with all the State Governments and the Union territory Administrations, imposing a complete ban on the lottery trade in the country. The matter was debated at length in Parliament when the said Bill was taken up for consideration. During the debate there was an overwhelming view in both Houses of Parliament in favour of banning the lotteries.

3. The matter was also placed before the Conference of Chief Ministers held on the 27th November, 1998 in New Delhi. The general consensus in the Conference was that lotteries should be statutorily banned.

4. Under the Constitutional frame-work, Parliament has legislative competence with regard to lotteries falling under entry 40 of List I (Union List) of the Seventh Schedule to the Constitution. Other types of lotteries fall under entry 34 of List II (State List) of said Schedule which is within the legislative competence of the State Legislatures. The Bill, therefore, proposes to prohibit the Central Government, State Government and any organisation controlled by such Government from conducting, organising or promoting any lottery. It also seeks to repeal the Lotteries (Regulation) Act, 1998.

5. The Bill seeks to achieve the aforesaid objective.

L.K. ADVANI.

R.C. TRIPATHI,  
*Secretary-General.*

